

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
W.R. GRACE & CO., et al., Case No. 01-01139 (JKF)
Jointly Administered
Debtors. March 22, 2004 (12 p.m.)
(Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 THE COURT: Hello? Hello?

2 MR. WESTBROOK (TELEPHONIC): Good morning. This
3 is Ed Westbrook in South Carolina on the line.

4 THE COURT: Good morning Mr. Westbrook. I'm just
5 about to call the W.R. Grace case. Just a minute, please.
6 Is she ready?

7 THE CLERK: Yes.

8 THE COURT: This is the matter of W.R. Grace, 01-
9 1139. There is an agenda that has been filed. The persons I
10 have appearing by phone are Mr. Westbrook, Ms. Wasser.
11 That's all. Is there anyone else on the phone?

12 MR. DAVIS (TELEPHONIC): Michael Davis for National
13 Union on the phone.

14 THE COURT: Anyone else? Okay. Just a second.
15 Okay, good morning.

16 MS. BAER: Good morning, Your Honor.

17 THE COURT: Afternoon. Sorry.

18 MS. BAER: Good morning, Your Honor. Janet Baer on
19 behalf of the Debtor.

20 THE COURT: Ms. Baer?

21 MS. BAER: Your Honor, the first item on your
22 agenda is actually the debtor's motion to extend the
23 exclusive periods. Might I suggest we move that to the end
24 of the agenda, as that is a contested matter, and many
25 things, Your Honor, I think we can get rid of pretty quickly.

1 THE COURT: Sure. I should tell you, I have had
2 orders entered, but I don't -- I doubt that they're on the
3 docket yet. With respect to item 2, as to which I had a CNO
4 filed. Three (a), 3(b), 7(a), and 7(b) that had COCs filed.
5 I believe item eight is an matter under advisement that I
6 have in chambers, and so I think that should leave us with
7 hearings on 1, 4, 5, 6, and 9.

8 MS. BAER: And I think I can take care of a couple
9 of those, given some developments this morning.

10 THE COURT: All right.

11 MS. BAER: Your Honor on -- that takes us to item
12 number 4. The motion of Yessenia Rodriguez to lift the stay.
13 Your Honor, you may recall, this has been on your agenda for
14 several months. This is a situation with First Dollar
15 Insurance Coverage. The insurance carrier is reviewing the
16 claim and negotiating with Ms. Rodriguez's counsel in the
17 hopes that they will settle that matter. It's a very small
18 matter. We expect it will settle, and this morning Ms.
19 Rodriguez's counsel agreed with us that we would just
20 continue this one more time in the hopes that they will
21 complete the settlement this month.

22 THE COURT: All right.

23 MS. BAER: Your Honor, item number 5, the motion of
24 Neutocrete Products, Inc. to lift the stay, Your Honor, this
25 is a matter where Grace had filed a post-petition collection

1 action, and the response from Neutocrete was a very
2 significant products liability counterclaim. Neutocrete has
3 filed a timely proof of claim for that claim, and W.R. Grace
4 has since withdrawn its post-petition collection action. So
5 Neutocrete has agreed to withdraw this motion. That matter
6 will be dealt with through the claims process.

7 THE COURT: Is something more to be filed that will
8 actually withdraw it?

9 MS. BAER: We actually have an order, Your Honor,
10 which we can hand up for entry.

11 THE COURT: All right.

12 MS. BAER: Your Honor, I've been informed by our
13 Delaware counsel that he conversed this morning further and
14 was informed that counsel from Neutocrete is going to file a
15 motion withdrawing -- or a stipulation withdrawing the
16 matter.

17 THE COURT: All right. Just a second, then. Okay.
18 Thank you.

19 MS. BAER: Your Honor, that -- the next matter on
20 your agenda, item number 6, is the debtor's motion for
21 limited waiver of Bankruptcy Rule 3007-1, for the purpose of
22 streamlining the objection process. Your Honor, we have
23 identified several gateway objections, as we've called them,
24 that we would like waiver of the local rules to file. These,
25 Your Honor, are ways in which we believe will streamline the

1 process and hopefully get rid of a lot of objections without
2 having to take a lot of time and attention. Your Honor,
3 there are approximately fifteen thousand claims that have
4 been filed in the case. Over forty three hundred of those
5 claims are asbestos property damage claims. In reviewing the
6 claims, we've identified 856 claims that are substantially
7 incomplete claim forms. We've actually attached, as Exhibit
8 A, to our motion, or -- I'm sorry -- to our reply, one of
9 those claim forms where you can see, Your Honor, that
10 effectively, all that's happened is somebody's filled in
11 their name, their address, maybe the name of the lawyer, and
12 one other piece of information, like where they work. Your
13 Honor, that's essentially all that's there. Under the local
14 rules, that would actually be a substantive objection, and we
15 would be limited by the hundred and fifty per filing, two
16 filings a month. Likewise a -- 1,523 proof of claim forms
17 have been identified that have materially insufficient
18 supporting documentation. As you may recall, the asbestos
19 property damage proof of claim form here is very detailed.
20 Asks for documentation or an explanation of where the
21 documentation is. As you can see from Exhibit B to the
22 reply, the kind of information we received in many of these
23 proof of claim forms is essentially nothing. The material --
24 the documentation that's attached is not documentation. It
25 is in some instances, an objection to the request for

1 documentation. It is in some instances, a one line note that
2 says, We will supply documentation at another period in time.
3 Your Honor, these two gateway objections are situations
4 where, from the proof of claim forms that have been filed, we
5 would have to file substantive objections, yet we don't even
6 know really what the claim is for. If we were required to
7 both adhere to the hundred and fifty per claim limit, as well
8 as adhere to the rule that we have to file all our
9 substantive objections at one time, we really could be
10 materially harmed here, because, frankly, we can't tell from
11 the proof of claim form what our objections might be, other
12 than the fact that the proof of claim form tells us nothing.
13 As we move along, Your Honor, with the other gateway
14 objections, we've identified over twenty eight hundred claim
15 forms that fail to include any product identification
16 information. Again, Your Honor, here we have no idea if this
17 is a claim against W.R. Grace, because there's not a single
18 clue in the proof of claim form as to how it could be a claim
19 against Grace. Likewise, Your Honor, we've identified over
20 three thousand three hundred statute of limitations and
21 latches-type objections which can be brought. Very routine,
22 Your Honor, situations where, based on the information in the
23 proof of claim form, clearly the statute of limitations has
24 run -- run by many, many years. Finally, Your Honor, we've
25 identified approximately two hundred claims that have been

1 filed where there's already been a settlement of the claim
2 involved in the proof of claim that was filed. Your Honor,
3 what we would like to do here is simplify this process.
4 These gateway objections, if filed, can get rid of, or sort
5 out, a tremendous number of claims so we can then get to what
6 are the real merits of the claims. With a waiver of the
7 hundred and fifty per omnibus objection rule, we can get
8 these brought in much sooner. For example, if we had to
9 adhere to the rule, just on statute of limitations alone, it
10 would take twenty two separate objections and eleven months
11 to get through that one gateway. Now, Your Honor, the
12 Asbestos Property Damage Committee has objected to this
13 motion, indicating that this is more burdensome to the
14 claimants, because theoretically, we could bring them back
15 time and time again. That's not our intention, Your Honor.
16 These gateway objections can, potentially, only have them
17 come here once, if at all, and get rid of it. For example,
18 if we win on statute of limitations, there's nothing else to
19 talk about. We don't necessarily say that we're going to
20 bring six separate gateway objections in all separate. Some
21 of these can be combined. For example, substantially
22 incomplete claim forms and material insufficient
23 documentation are two objections that can be combined into
24 one omnibus objection that can potentially take care of over
25 two thousand claims. If those are gone, we will either have

1 eliminated them completely, which happens in the claims
2 objection process, or we will then get into a situation where
3 we can identify what these claims really are. Then we can
4 review the substance and determine all of our substantive
5 objections to the claims. Your Honor, these are not
6 situations where we are trying to, and in any way want to
7 hamper, individuals and make them keep coming to court.
8 Asbestos property damage claims in this case, by and large,
9 are building owners, hospitals, large entities. They're not
10 mom and pop who have a problem with their house. As you
11 recall, Your Honor, there is no ZAI bar date. Therefore, the
12 individual claims on property damages, ZAI type claims are
13 not involved here. In addition, Your Honor, as you know
14 there is no bar date for asbestos personal injury claims.
15 So, while we reserve the right to pursue this kind of a
16 process for asbestos personal injury, if and when we get
17 there, we're not asking for any relief at this time with
18 respect to asbestos personal injury. Finally, Your Honor,
19 with respect to medical monitoring. Medical monitoring
20 claims are a little bit of a hybrid, somewhat related to
21 asbestos personal injury claims. The analysis we have done
22 and the gateway objections that we have identified do not
23 include medical monitoring claims. And at the present time,
24 we do not anticipate the gateway objections will apply to the
25 medical monitoring claims. They do apply, however, to the

1 asbestos property damage claims and, in some circumstances,
2 to the non-asbestos unsecured claims. Your Honor, under
3 these circumstances, we would ask for a waiver of local rule
4 3007, so that we could bring these gateway objections without
5 being -- having to fit into the numbers that we would
6 otherwise be required to bring. As well as, without having
7 to bring all substantive objections at one time.

8 THE COURT: Okay. Mr. Baena.

9 MR. BAENA: May it please the Court. Good morning,
10 Your Honor. Scott Baena on behalf of the Official Committee
11 of Asbestos Property Damage Claimants. Your Honor, over the
12 course of this case, we've heard the debtors say, rather
13 unequivocally at times, that the extent of property damage
14 claims in this case are relatively insubstantial. And now,
15 ironically, we hear them say that by virtue of the sheer
16 number of property damage claims that were filed, in excess
17 of four thousand, we need to streamline the manner in which
18 we deal with the objections that they wish to lodge to those
19 claims. Some of which relate, as alluded to by counsel, to
20 installations of Grace product in properties across the
21 United States more than thirty years ago. What's apparent to
22 us is that despite the apparent good intentions, what we are
23 being confronted by, in this instance, again, is just a war
24 of attrition. We started this process with an
25 extraordinarily detailed proof of claim form -- unparalleled

1 in any other asbestos bankruptcy case -- that required a
2 considerable amount of information. Information, which even
3 Your Honor recognized might not be readily attainable in all
4 instances, and you indicated that you would keep an open mind
5 as we went through this process. There's a good reason why
6 what they wish to do is prohibited. But, before I get to
7 that reason, I would like to point out a threshold reason why
8 this motion is inappropriate. And, in particular, Your
9 Honor, Local Rule 2002-1 would require the debtor to give
10 notice to any person that has rights that are affected
11 adversely by a motion before the Court. Ironically, the
12 response filed to our objection to this claim, enumerated
13 illustratively, problems with various proofs of claim forms
14 that were filed by property damage claimants. Yet, based
15 upon the service list that we have been provided by the
16 debtor, the only persons that have been provided with notice
17 of this motion was the Property Damage Committee and its
18 members. None of the claimants have been provided with any
19 notice of this hearing or of the motion itself. None of the
20 claimants, whose claims are implicated by this -- this count
21 that's provided for in their response have been apprised of
22 the fact that they might be within one of those baskets, and
23 they might have a reason to be here today, and so, there was
24 improper notice of this hearing. And for that reason alone,
25 we don't think that the Court can proceed. But, even if we

1 are to consider the substance of the motion, I think the
2 substance of the motion, too, proves why it's not well taken.
3 Firstly, Judge, the six categories of gateway -- the so-
4 called gateway objections, is so pervasive, particularly by
5 virtue of the inclusion of statute of limitations, statute of
6 repose, and latches objections, that it doesn't lend itself
7 to the kinds of objections that we're talking about the
8 debtor lodging here. Judge Rolin made it very plain in his
9 standards opinion in the Sealed Air litigation, over the
10 fraudulent transfers that ensued, that there was nothing
11 about bankruptcy that abrogates the application of state law
12 to the determination of when particular asbestos claims
13 arose. We're not creating federal common law here as to a
14 statute of limitation. And so, beyond being merely labelled
15 commonly as statute of limitations objections, and statute
16 repose, and latches objections, every objection of that
17 nature will depend upon the application of the state law of
18 the particular jurisdiction whose law controls this dispute.
19 And, in that application of that law will depend, as you well
20 know, upon the particular facts and circumstances of each
21 claim. So --

22 THE COURT: But that's always true, Mr. Baena. I
23 mean, I could compel the debtor to say that if the property
24 is in Florida or the issue is governed by Florida law, to put
25 all the Florida ones in one objection. But, omnibus

1 objections always have each claim examined on their own
2 merits. It's just that you're looking at the same issue with
3 respect to the claims.

4 MR. BAENA: I understand that. But, you see Judge,
5 therein lies, we think, the -- and I don't believe it was an
6 intentional, but certainly at least an inadvertent mistake.
7 And that is, in order to bring the gateway objections, in
8 respect of limitations, repose, and latches, the debtor will
9 necessarily have had to make detailed examinations in respect
10 of each of the clients. They need to know what the product
11 is, they need to know where it was installed, they need to
12 know when it was installed, they need to know the nature of
13 the application of the product. They need to know everything
14 they would need to know, we submit, for purposes of bringing
15 all other objections in respect to that client. And, so,
16 it's just a pretense to just drag out and truncate this
17 process in respect to property damage claims. And if you can
18 bring a gateway objection, so to speak, in respect of the
19 statute of limitations, then I submit you can object to
20 everything else you find offensive about that particular
21 proof of claim. And there is absolutely no logical basis to
22 then say, Okay, having done all that drilling, to find all
23 those circumstances, fact and the law that apply to that
24 claim, having lost the statute of limitations argument, they
25 can now come back and bring some other argument. Subjecting

1 a property damage claimant, that's been content up till that
2 point in time to allow a committee to represent its
3 interests, collectively, with it's entire constituency, to
4 come back to this court on several occasions. It's just --

5 THE COURT: But there's not --

6 MR. BAENA: -- inappropriate.

7 THE COURT: But if there were statute of
8 limitations issues, raised in a substantive objection on the
9 merits, I'd probably bifurcate them out anyway. Because, why
10 get to the merits if the issue's going to be controlled by a
11 principle of law.

12 MR. BAENA: Well, you may well wish to bifurcate
13 it, Judge, but that claimant will have had the benefit of
14 knowing all the objections to its claim.

15 THE COURT: But, what difference is it going to
16 make if the issue is -- if the issue is adjudicated by way of
17 a statute of limitations? And if it isn't, then what harm is
18 there in letting the folks address the merits later?

19 MR. BAENA: Well, Judge, not to be flip, but that's
20 exactly the type of due process that that rule was intended
21 to provide. The claimant is entitled to know all of the
22 objections that are being asserted.

23 THE COURT: I don't think that was --

24 MR. BAENA: It's not supposed to be a --

25 THE COURT: -- a due process --

1 MR. BAENA: -- slow leak.

2 THE COURT: The thirty -- the 3007 rule or the
3 notice rule? What -- which rule are we talking about?

4 MR. BAENA: Well, the notice rule we already know
5 hasn't been complied with.

6 THE COURT: Okay. On the --

7 MR. BAENA: We're talking about --

8 THE COURT: The 3007.

9 MR. BAENA: We're talking about the rule that
10 limits objections to a single objection.

11 THE COURT: Okay. I don't think that's a due
12 process issue on behalf of the claimants at all. I think
13 that's a convenience of the Court issue. It's difficult to
14 handle a hundred and fifty objections or more in any one set
15 of pleadings. Particularly in this district, where you have
16 to file the proofs of claim along with everything. It has
17 nothing to do with due process. It has to do with Court
18 convenience.

19 MR. BAENA: Well, Judge, I do believe that the
20 limitation on the number of objections that could be brought
21 at one time, clearly, is a matter that goes to the management
22 of the Court's docket.

23 THE COURT: Yeah.

24 MR. BAENA: But, I do believe that there is another
25 sense that one could perceive from that rule, that goes

1 beyond just managing one's docket. And that is the
2 expectations of a claimant to know all of the objections that
3 are going to be lodged against it, so that there's finality
4 as to the allowance or disallowance of it's claim.

5 THE COURT: Well, with --

6 MR. BAENA: By this basis, Judge, it's not until
7 the end of the day that anybody knows anything in respect of
8 their claim.

9 THE COURT: This case could go on for the next
10 twenty five years if the debtor is forced to bring a claim
11 objection, one at a time, against every -- every claimant.
12 Not just the property damage claims, but every claimant.
13 There is no court, that I know of, that handles mega cases
14 like this, that requires a specific objection for every
15 claim. They're all handled by omnibus objections. In fact,
16 Chapter 7s are handled by omnibus objections. So, I don't
17 see that as the problem. Now, if there is an issue with
18 respect to the fact that some claimants said they would
19 submit documentation later and hasn't, it seems to me that
20 before I struck that claim, it might be more appropriate to
21 have the debtors send out one more notice saying, You said
22 you were going to submit the documents, you didn't, you've
23 got X number of days to do it, and if you don't, we're going
24 to file an objection based on the fact that there's improper
25 documentation. Now, I'm willing to provide one more

1 opportunity for claimants who have timely filed claims to do
2 it. I'm not reopening the bar date. But, if it's a -- if
3 it's a supplement to the documentation, I may be willing to
4 do something along those lines. But, I really don't see a
5 reason why we shouldn't be addressing matters that may be
6 able to be defended or prosecuted, one or the other, as
7 matters of law first. If they can be addressed -- if they
8 can be addressed in that fashion, we never get to the merits
9 issue. Why incur all that expense on behalf of the claimant?

10 MR. BAENA: Well, perhaps the claimant ought to
11 have the opportunity, Judge, to decide whether or not to
12 withdraw their claim based upon the totality of the
13 objections that will be lodged against that claimant.

14 THE COURT: Well, they can always do that.

15 MR. BAENA: But --

16 THE COURT: I mean, if the notice goes out that
17 says the Court's approved, you know, a piecemeal objection
18 for the reason of court convenience and making sure that we
19 address the propositions of law first, you know, then they
20 know. They may be subject to it. I'll put a -- I think I
21 can impose a limitation on the number of times that the
22 debtor is able to go back to the well for any specific
23 claimant. But I really don't see why the gateway objections
24 idea isn't a sound one. It seems me to be a sound method of
25 proceeding.

1 MR. BAENA: I would like to follow up on an earlier
2 remark you made about unnoticed. I would point out, in fact,
3 that in U.S. Gypsum, Judge Newsome did just that. He
4 required the debtor to give a notice and until the notice was
5 given and a response was not provided or an inadequate
6 response was provided, the objection process didn't really
7 start. And, at the very least, we would encourage the Court
8 to direct that they be required to provide such a notice that
9 they aver that the notice was inadequate or not -- or did not
10 list -- or the response, rather, was inadequate or not given
11 at all before they lodge an objection based upon the
12 insubstantial or incomplete information --

13 THE COURT: Yeah. I'm willing --

14 MR. BAENA: -- they're complaining about.

15 THE COURT: I'm willing to do that Mr. Baena. I
16 recognize that in many instances these buildings were built
17 with the product installed many years ago. Nonetheless, it's
18 still the claimant's burden to prove that there is a claim
19 against this debtor. So, yes, although I realize that the
20 deadline for objecting -- I'm sorry -- for filing proofs of
21 claim was set, and I did require significant information, it
22 seems to me now those claimants have had -- I'm not sure when
23 the bar date was, but it was several months ago, at least.
24 They've had, certainly, sufficient time to go back into their
25 stacks of paper, or whatever records, and find those

1 documents now, if they exist.

2 MR. BAENA: Judge, I don't represent a particular
3 claimant, as you well know, but I am unaware of any dialogue,
4 if you will, between the debtor and any particular claimant,
5 asking for that particular information. We see a couple of
6 proofs of claims, out of four thousand, it's a rather
7 insubstantial number attached to their response, in which the
8 claimant said that they were in the process of preparing
9 information or that they would supplement. I don't know if
10 that's an epidemic or not. But, I am unaware, and it
11 certainly isn't stated in any of the pleadings, that they
12 followed up with any of those claims.

13 THE COURT: Okay. Well, as I said, I'm content to
14 have I'll call it the one more opportunity to get on the
15 bandwagon notice go out. But, if that fails, I think at that
16 point in time, I'm going to let the debtor prosecute these
17 types of gateway claims that have been identified. And I
18 also think that there should be a limitation. You know, the
19 debtor should not be able to go back to each claimant so
20 often that it's harassing. So, I think maybe one gateway
21 objection, and then that's it. The rest of the things have
22 to be on the merits, because I think that's enough. Two
23 times against any claimant is enough. But, if there's a
24 statute of limitations issue, I really see no benefit to
25 having a claimant have to go to the expense of attempting to

1 prove up the whole claim, when, in fact, it's going to be
2 discharged essentially because the statute of limitations has
3 expired.

4 MR. BAENA: Well, Judge, you know, a statute of
5 limitations defense could be virtually a trial on the merits.

6 THE COURT: Well, maybe. But, I'm not sure how.
7 It depends -- because of the timing in which the asbestos
8 injury was made known?

9 MR. BAENA: It -- there are a number of issues that
10 are implicated by the statute of limitations issue that
11 literally go to the heart of the claim.

12 THE COURT: In the property damage instance, the
13 building owners didn't know that asbestos was installed in
14 their building when the building was made or when the
15 installation took place?

16 MR. BAENA: Judge, unless you're prepared to issue
17 a ruling that everybody should have known, and very few
18 courts -- I don't know of any courts that have ever issued
19 such a ruling, that proof has to be determined as to each
20 property damage claimant that they serve that defense
21 against. And --

22 THE COURT: I think that won't be a difficult
23 thing, because depositions or something else can determine
24 it. I can't understand how, if you have a product that's
25 installed in your building that says, This contains asbestos,

1 that you didn't know.

2 MR. BAENA: Oh, Judge, if this were like a pack of
3 cigarettes that had an inscription on it giving everybody
4 full warning, this would be an entirely different landscape
5 that we were walking upon here.

6 THE COURT: I don't know about the --

7 MR. BAENA: But that's not what asbestos was like.

8 THE COURT: It's not about the forewarning, it's
9 the fact that there was asbestos. So they know that this --
10 that the product is in the building. Then when they -- when
11 there is an injury likely to happen, that's a different
12 issue.

13 MR. BAENA: Judge, I ask you to keep an open mind.
14 I don't want to --

15 THE COURT: I do have an open mind.

16 MR. BAENA: -- debate that with you. It's not
17 necessarily the case that somebody knew there was asbestos in
18 the material that they installed on their premises. It's not
19 necessarily clear, from the product, who's product it was.

20 THE COURT: Well then, how are they going to prove
21 their claim?

22 MR. BAENA: Well, my point is, it took time to
23 determine that in respective claims.

24 THE COURT: Oh. Okay. That's fine.

25 MR. BAENA: All of that is implicated in this, and

1 the very nature of the harm goes to the statute of
2 limitations issue, as well, in some jurisdictions. There's
3 differences of view as to when the course of action occurs
4 and accrues under various laws.

5 THE COURT: Give me --

6 MR. BAENA: This is a --

7 THE COURT: -- the outside time limits.

8 MR. BAENA: -- major undertaking.

9 THE COURT: Six years from the date that you know
10 is probably the longest statute of limitations for the date
11 that you find out that you're subject to an injury in the
12 tort system?

13 MR. BAENA: Well, that's not necessarily true
14 either.

15 THE COURT: Well, what is?

16 MR. BAENA: Well, Judge, there's nolens tempus in
17 some states, and there's no statute of limitations
18 whatsoever. And, again, there's --

19 THE COURT: Well, they won't have a statute of
20 limitations defense if there's no statute of limitations.

21 MR. BAENA: Well, in some --

22 THE COURT: So, we won't be hearing those.

23 MR. BAENA: In some jurisdictions, the course of
24 action doesn't accrue until there's contamination.

25 THE COURT: Okay. Then we won't be hearing those,

1 I guess.

2 MR. BAENA: So, there's a large variety of matter
3 being covered by it, and what I was suggesting earlier is
4 that it's that finite information that -- it goes right to
5 the nature of any other objection that you can conceive of
6 that they might have. What else could it be? I mean, you've
7 got a, you know, the statute of limitation argument is going
8 to implicate every other kind of objection that they could
9 raise.

10 THE COURT: Well, and conversely, it's the first
11 thing that's going to be looked at with respect to every
12 other objection that's raised. Because, if, in fact, there
13 is, as a legal matter, a defense to the claim based on the
14 statute of limitations, that's the first thing that's going
15 to be addressed. So, one way or another, I guess we're going
16 to get to that statute of limitations issue. Why does the
17 debtor need to do the statute of limitations, latches,
18 statutes of repose issues as gateways? As to the property
19 damage?*

20 MS. BAER: Well, Your Honor, again, with how many
21 of them, given how many years ago these buildings were built,
22 and how long people have been on notice that asbestos in
23 buildings is an issue, they're extremely obvious. And in,
24 frankly, the great majority of the asbestos property damage
25 claims that have been filed would be subject to statute of

1 limitations objections. And we've done the state by state
2 analysis. And we know the rules on accrual. This is what
3 W.R. Grace has been doing for years and years. And these are
4 so obviously falling within the statute of limitations that
5 doing it as a gateway will get rid of it. These claims will
6 be gone, and we'll get to what the real claims are.

7 THE COURT: Well, I don't know. I think what I'll
8 do is permit the debtor to make a stab at it. If it turns
9 out to be inappropriate, and there are too many other issues
10 that come up, then I think at some point, I can always
11 require the debtor to amend the claim to put the whole nine
12 yards in. But, I think I'll permit it. However, not until
13 the debtor sends out one more notice that attempts to get the
14 claims that are insufficient, for whatever reason, the timely
15 filed claims that are insufficient, fixed. So, why don't you
16 work with Mr. Baena and see whether you can come up with an
17 appropriate order and some deadlines by which the claimants
18 will file whatever it is that's missing from their claims, to
19 support the claim. And if they don't, then at that point in
20 time, I think the objection process against the property
21 damage claims has to start.

22 MS. BAER: Your Honor, I'm sure Mr. Baena and I can
23 work out the wording of an order. Couple of questions just
24 to make sure we don't have any disputes. Are you also
25 directing that all of the gateway objections as to a claimant

1 be done at one time so that they don't have to keep coming
2 back? I know you had talked about it, but you weren't clear
3 about what --

4 THE COURT: Yeah. I think -- I think you -- one
5 round of gateway objections, you know, should take care of
6 all the gateway objections that the debtor intends to raise
7 against any specific claimants. So, it should be one gateway
8 objection, and then, if the claim still survives that
9 process, then it should be one objection for everything else.
10 I don't think anybody should have to come back here more than
11 twice for this. I appreciate the need to sort of get this
12 winnowed down to the point where it's manageable, and it may
13 not be manageable right now, but nonetheless, I think there
14 is a fairness component to this that has to be attributed to
15 the claimants too. So I'm comfortable with one gateway
16 process, but then after that process works itself out, I
17 think at that point in time, it should be addressed on the
18 merits. So, if for example, claim number one is subject to
19 two gateway objections and an objection on the merits, then I
20 think you should make sure that all of your gateway
21 objections for claim number one go -- get filed at the same
22 time so there's only one response date as to all of those
23 gateway objections for claim number one. Does that --

24 MS. BAER: I understand --

25 THE COURT: -- make sense?

1 MS. BAER: Yes. I think it does make sense.

2 THE COURT: All right. So they only have to be
3 here -- for example, if the first hearing is set in May, then
4 they need to either be here or prepare to address the
5 responses in May. And then, that's it for that round of
6 objections. The next round of objections should be on the
7 merits.

8 MS. BAER: Your Honor, one other point of
9 clarification. Given that these omnibus objections could
10 have a thousand claims at one time, what do we do with the
11 rule in terms of submitting proof of claim forms? Do you
12 want us to not submit them? See where we get responses, and
13 then only submit proof of claim forms for those --

14 THE COURT: I don't think I want --

15 MS. BAER: -- with responses?

16 THE COURT: -- the proof of claim forms right now.
17 If we get responses, yes. I definitely want them then.
18 Unless there are responses, though, I think I'll wait and see
19 what the objections the debtor files are -- or, why don't we
20 do this: why don't you just pick ten at random, and just
21 include for every objection ten, so I can see a sample of
22 what it is that the debtor is alleging, but I really don't
23 think I need to see them all, if it goes through by default.
24 If there's a response, then I definitely want the claims.

25 MS. BAER: We will do that, Your Honor. We'll put

1 together an order and work with Mr. Baena.

2 THE COURT: Okay.

3 MR. BAENA: Judge, we would ask that we be provided
4 with copies of the notices that they send.

5 THE COURT: Which notices?

6 MR. BAENA: The notice of the deficiency in the
7 proof of claim

8 THE COURT: Oh, sure. I'm expecting that you're
9 going to work out the terms of that notice, and yes, you can
10 certainly be served with the copies of those notices. Yes.
11 I expect that service is going to go on to all parties in
12 interest.

13 MR. BAENA: Okay. And as I understand it, Judge,
14 by requiring all of the gateway objections to be done at one
15 time and the notice requirement, if somebody is only subject
16 to a statute of limitations defense, that can't be filed yet,
17 either until the notices went out.

18 THE COURT: That's right.

19 MR. BAENA: Okay.

20 THE COURT: Yeah. The notices have to go out so
21 that whatever supporting documents come in are in.

22 MR. BAENA: Right.

23 THE COURT: Before the debtor starts these -- this
24 objection process, because there may be something in the
25 documents that will convince the debtor that maybe a statute

1 of limitations defense isn't appropriate. That they may
2 think is right now. So, I want the notice process to work
3 it's way through, and then the debtor can start. Now, as to
4 the non-property damage claims, though, I think the debtor
5 can get started on those objections. There's no reason to
6 hold up on those, as I understand it. That's not a
7 documentation issue; correct?

8 MS. BAER: I don't think it is in most instances,
9 Your Honor, but we will, in light of what you said, be
10 consistent in terms of the non-property damage claims. If it
11 makes sense for insufficient documentation there, we can do
12 the same thing with the same notice. One question on notice,
13 Your Honor, so again we don't have a dispute and have to come
14 back to you. In terms of timing for response on the notice,
15 Mr. Baena and I could end up having a very different
16 viewpoint on that. Obviously, we think something like a
17 forty-five day period would be appropriate. I don't know
18 what Mr. Baena's viewpoint would be. It might make some
19 sense to just talk about that right now.

20 THE COURT: Mr. Baena?

21 MR. BAENA: Well, just to be contrary, sixty days,
22 Judge, would be nice.

23 THE COURT: Fine. Make it sixty days. I mean, at
24 this point in time, they should have -- they should have the
25 documents together because they've certainly had sufficient

1 notice to be working on it. So, I'm -- was more sympathetic
2 before, they've had lots of time now, I'm starting to get
3 less sympathetic, so, sixty days ought to be enough.

4 MS. BAER: Thank you, Your Honor.

5 THE COURT: Okay.

6 MS. BAER: We'll provide that.

7 THE COURT: All right.

8 MR. BAENA: And just for the record, Judge, you're
9 overruling the notice objection.

10 THE COURT: To the parties in interest?

11 MR. BAENA: Yes.

12 THE COURT: The reason I'm going to overrule that
13 objection, Mr. Baena, is because this notice that I'm
14 requiring the debtor to send out I think will have to advise
15 the parties that this is the process that the Court's
16 approving. So, if they have some objection to it, it's
17 without prejudice that they're raising whatever objection
18 they're going to have to it, and I'll hear it.

19 MR. BAENA: Thank you.

20 THE COURT: So, yes. I'm raising it for now -- I'm
21 sorry, I'm overruling it for now.

22 MR. BAENA: Okay.

23 THE COURT: All right. So, I'll get an order on
24 number 5. Actually, I think -- wasn't that 6?

25 MR. BAENA: Yes, Your Honor.

1 MS. BAER: That was 6, Your Honor.

2 THE COURT: Okay. Thank you.

3 MS. BAER: Your Honor, item number 7 is the interim
4 fee applications. I believe you indicated you had entered an
5 order. Just so you're aware, Your Honor, Mr. Smith is in the
6 courtroom today if you have any questions or would wish to
7 address anything to him. He happens to be in town today.

8 THE COURT: I don't unless he has something he
9 wants to tell me. Mr. Smith?

10 MR. SMITH: No, Your Honor. I have nothing to add.

11 THE COURT: Okay. Thank you.

12 MR. SMITH: Short and sweet, Your Honor. Thank
13 you.

14 MS. BAER: Your Honor, item number 8 on your agenda
15 is the status conference on the ExxonMobil summary judgment.
16 This was a reminder to Your Honor that this matter is under
17 advisement and has been for some time.

18 THE COURT: Yes. I'm glad you pointed it out,
19 because I thought I had assigned this to one of my law
20 clerks, and it turned out that, in fact I hadn't. So, when I
21 get back to Pittsburgh, I will. Thank you.

22 MS. BAER: Thank you, Your Honor. Your Honor, item
23 number 9 on your calendar is a status report from the debtors
24 on their claims resolution process. Your Honor, a couple of
25 days ago we submitted to Your Honor a status report. I don't

1 know if you have received it, we hope you have.

2 THE COURT: I have it, but I just received it this
3 morning, and I have started to read it, but I haven't
4 finished it yet.

5 MS. BAER: Your Honor, if you turn to the last
6 page, it's actually the claims summary, and you can see how
7 Grace has approached these claims. And I'll just -- a quick
8 overview so you know where we're at, and where we hope to be
9 going with this. Your Honor, the W.R. Grace team, both
10 outside counsel and in-house counsel, has gone through all of
11 the fifteen thousand objections in detail, claim by claim.
12 Organized them by certain logical groupings, and the lawyers
13 at W.R. Grace who were involved in those claims prior to the
14 time of the filing of the bankruptcy are essentially assigned
15 to deal with the claims. Accounts Receivable will deal with
16 accounts receivable; lawyers who were handling asbestos
17 property damage litigation, handle the claims. They have
18 gone through and have identified all of the various
19 objections. We've just spent a lot of time talking about the
20 way in which we're going to start to approach the asbestos
21 property damage claims more than any of the others. But,
22 Your Honor, with respect to the others, we are preparing and
23 are prepared to go forward with filing omnibus objections.
24 In fact, our third, fourth, and fifth omnibus objections are
25 likely to cross your desk in the next couple of weeks, and

1 we'll be set for the May omnibus hearing. I believe one is
2 substantive and two are non-substantive omnibus objections.
3 Your Honor, we have put together and are putting together a
4 schedule so that we can begin the process of having omnibus
5 objections set at each of the omnibus hearings going forward
6 from here on to get through these. The biggest challenge we
7 will have, Your Honor, has to do with the non-asbestos
8 litigation claims, which were pending at the time Grace
9 filed, as well as the claims that had been filed in the case,
10 like the Westconn claim, which was on your calendar last
11 month, where there is a substantive -- substantive claim for,
12 for example, products liability where there is no pending
13 lawsuit. And we are going through, trying to figure out the
14 best way to approach the non-asbestos litigation and what is
15 essentially a litigation type claim that's been filed in the
16 case. Frankly, Your Honor, we think that a bankruptcy
17 mediation process may be the most logical way to approach
18 many of these claims. What we would like to do, Your Honor,
19 is have the opportunity to go through each and every one of
20 the non-asbestos litigation claims, as well as some of these
21 claims that are essentially like litigation claims. As you
22 can see on the chart we've put together, we have about two
23 hundred non-asbestos litigation claims. And there are some
24 other miscellaneous claims that fall in with them where,
25 again, a bankruptcy mediation process, or something like that

1 may make sense. We also have a number of substantive
2 objections that are not technically litigation claims, where
3 too, we believe a mediation process may make some sense.
4 We'd like the opportunity, in the next sixty to ninety days
5 to submit to the Court a proposal on how we'd like to go
6 forward on all of those claims. We have gone through,
7 updated all of the litigation since the filing of the
8 bankruptcy case. In that respect, interestingly, many things
9 have gone away. Because of other matters that were involved,
10 third party issues and the like, many of the litigation
11 claims have disappeared. Others of those may be ready for
12 settlement. Especially after the passage of time. Things
13 have changed and some of them are much more ripe for
14 settlement. And, again, others we will simply have to go
15 forward and liquidate somehow in the bankruptcy case. At the
16 present time, we've done everything we can to get the omnibus
17 objections together, and would ask for permission to submit a
18 report to this Court within sixty to ninety days on how to
19 handle the litigation type claims.

20 THE COURT: Okay. Anybody want to be heard on this
21 matter? That sounds reasonable. I think at this point, you
22 know, you've got to start getting these things done. So,
23 that's fine. If you're going to suggest mediation, though, I
24 think in that report perhaps you better suggest a mediator.
25 See if we can't get somebody appointed for the purpose of

1 getting these resolved.

2 MS. BAER: Yeah. We understand, Your Honor, the
3 Delaware mediation system is getting quite crowded, and we
4 will discuss that with our Delaware counsel and figure out
5 what makes sense there.

6 THE COURT: Okay.

7 MS. BAER: Your Honor, also on this status, you had
8 asked for a status on the Westconn claim?

9 THE COURT: Yes.

10 MS. BAER: Your Honor, we have -- we have received
11 revised discovery requests from Westconn, and we will be
12 answering those within thirty days. Westconn will then be
13 part of the claims process. We have already objected to
14 their claim. The discovery will progress, and this is likely
15 to be one of those claims that will be very ripe for
16 mediation.

17 THE COURT: All right.

18 MS. BAER: Your Honor, that brings us to the
19 exclusivity matter. But, before I go there, one other thing
20 I wanted to bring to the attention of the Court. The Court
21 has under advisement our motion to extend the preliminary
22 injunction to claims against Montana Vermiculite Company.
23 Last month I filed a notice with the court notifying the
24 Court that there is more litigation out there than we had
25 been aware of. The law firms that we had been dealing with

1 on the preliminary injunction have agreed to stay all
2 litigation pending the outcome of your ruling. However,
3 there is another law firm in Montana who has recently served
4 on us what was eleven -- and I think we're now up to twelve
5 or thirteen -- notices of suits that they have amended to add
6 Montana Vermiculite party as a defendant. Under those
7 circumstances, Your Honor, we just wanted to bring it to your
8 attention that this matter is under advisement and is of
9 great concern to us.

10 THE COURT: All right.

11 MS. BAER: Your Honor, that brings us to the
12 debtor's motion to extend the exclusivity period.

13 MR. SMITH: Your Honor, excuse me. If I could be
14 heard. Could I be excused?

15 THE COURT: Yes, sir.

16 MR. SMITH: I was in town for another matter this
17 morning, and I thought I'd come here and get an education on
18 this case, but I've seen contested matters before so I think
19 my education is complete.

20 THE COURT: Yes, Mr. Smith, thanks.

21 MR. SMITH: Thank you.

22 THE COURT: Okay. Item 7?

23 MS. BAER: Item -- actually, it's item number 1.

24 THE COURT: One. Okay. Thank you.

25 MS. BAER: Your Honor, this is the debtor's motion

1 to extend it's exclusive period to file a Chapter 11 plan,
2 and to solicit acceptances thereof. As Your Honor is well
3 aware, we filed this case in April of 2001 because of the
4 overwhelming asbestos related lawsuits that were pending
5 against the company. We started off, frankly, very quickly
6 and immediately tried to use the Chapter 11 process to
7 address the asbestos related personal injury issues. In May
8 of 2001, we filed a case management proposal which included a
9 proposal from the debtor on how to handle asbestos personal
10 injury claims, asbestos property damage, ZAI, the Sealed Air
11 fraudulent conveyance litigation, as well as non-asbestos
12 litigation. That entire proposal was set for hearing before
13 our District Judge Farnan in November of 2001. And, on the
14 day that that hearing was to go forward, Judge Farnan, of
15 course, was removed from the case as the Third Circuit
16 determined that that, as well as four other related cases,
17 would be assigned to Judge Rolin. Your Honor, that slowed us
18 down somewhat and has gone in fits and starts since then.
19 This Court has done everything in its power to move the case
20 along. Your Honor set bar dates for asbestos property
21 damage, bar dates for non-asbestos claims and medical
22 monitoring. The claims have come in, the claims process is
23 moving forward, and today, Your Honor helped that greatly in
24 addressing the 3007 motion so that the process can move
25 forward in a timely and efficient manner. Your Honor also

1 set a framework after hotly contested issues on ZAI, so that
2 we could approach ZAI. You set bar -- you set dates, the
3 matter was briefed, and the matter would have gone to trial
4 at the end of last year, or at the beginning of this year,
5 however, of course, the parties determined that settlement
6 discussions made some sense, and they continued to have those
7 settlement discussions. The matter is set for status here in
8 May. Your Honor also pushed along various other things in
9 terms of getting us to move forward, and at the same time
10 Judge Rolin took on the Sealed Air litigation, and he took on
11 the asbestos personal injury litigation. We had to re-brief,
12 or substantially re-brief and add to our briefing on the
13 asbestos personal injury approach that we had submitted to
14 Judge Farnan originally, and that matter was set for hearing,
15 but the -- the Sealed Air fraudulent conveyance litigation
16 took precedent, and the year 2002 was essentially used,
17 almost completely, for the fraudulent conveyance litigation.
18 The matter was ultimately resolved, although the settlement
19 has not been approved, and a great deal of time was spent in
20 the Spring of 2003 trying to resolve issues as to the
21 structure of that settlement. Given Judge Rolin's current
22 status, that settlement motion has been filed by the asbestos
23 committees, but has not yet been heard before Judge Rolin.
24 Your Honor, that left open, and left very prime for
25 litigation and resolution, how to handle asbestos personal

1 injury matters. Unfortunately for us, that's also been slow
2 going, not due to the debtor, but due to the fact that now we
3 don't have a judge again, at least for the time period. In
4 the meantime, Your Honor, though, we have moved forward and
5 tried to do what we can to put together a Chapter 11 plan.
6 When we were here in September, Your Honor ordered the
7 debtors to meet with all of the creditor constituencies to
8 talk about a plan. We did more than that, Your Honor. We
9 didn't just talk about a plan, we actually put together a
10 financial analysis of what a logical plan would be. We
11 presented that financial analysis to all of the creditor
12 constituencies including the Equity Committee. That claim,
13 Your Honor, called for substantial equity and monies to be
14 provided to asbestos personal injury claims, of course. It
15 also provided for full payment of all claims over time,
16 because it's the debtor's opinion -- it was on day one and is
17 today -- that, in fact, this company is not insolvent. And
18 that there are assets available to pay all claims. Your
19 Honor, the Personal Injury Committee completely rejected the
20 debtors suggestions of plan structure. They completely
21 rejected it, Your Honor, frankly, because we're not willing
22 to do what they want to do. And, that's why we have not been
23 able to make progress with them. We have talked with the
24 creditor constituencies, we continue to talk with the
25 asbestos property damage, with the ZAI constituencies about

1 their claims. But, because we've been unwilling to
2 essentially do what the PI Committee wants us to do, we have
3 not gotten anywhere with the PI Committee. In fact, Your
4 Honor, the experience of putting together some proposals for
5 the PI Committee proved to us why we very much do need this
6 Court's assistance, or Judge Rolin's assistance, in moving
7 forward to put together a consensual plan. It would be easy
8 if we wanted to give the company to the Asbestos Personal
9 Injury Committee and their constituency. That's not why
10 we're in Chapter 11, to take the easy way out. We don't
11 believe that's appropriate. We have a fiduciary duty to all
12 creditor constituencies. The Asbestos Property Damage
13 Committee, the ZAI claimants, the Unsecured Creditors
14 Committee, and the unsecured non-asbestos claimants, and the
15 equity of Grace. It is Grace's firm belief that there is
16 equity in this company that can be preserved for its
17 shareholders, and it's our duty, if that in fact is the case,
18 to preserve it. Under these circumstances, Your Honor, cause
19 clearly exists to extend the exclusivity period, once again,
20 to let the debtor complete what it has begun to achieve. The
21 debtor has made progress, the debtor does have issues still
22 to resolve. Those issues do need to be resolved, and they
23 need to be addressed in whichever way we can move forward.
24 We have not moved forward as quickly as we wanted to. We
25 have not moved forward as quickly as we would like to. We

1 have run into some interesting issues that certainly weren't
2 anticipated, including essentially losing our judge twice,
3 who was supposed to be handling asbestos personal injury.
4 Your Honor, the Asbestos Personal Injury Committee accuses us
5 of not having made progress. Progress, yes. Acquiescence,
6 no. We cannot be in a position to acquiesce. We need to
7 address these issues and do it in a way that is appropriate
8 for all creditor constituency. We have had dialogue, we're
9 continuing to have dialogue. We have, Your Honor, also
10 internally been working on our plan proposals, working with
11 our financial consultants to present plan proposals that give
12 as much as we have to give to the creditor constituency. We
13 have been moving the ball down the field. Maybe not as fast
14 as anyone wanted. Clearly, not as fast as the debtor wanted.
15 We were off and running on day one and got stopped several
16 times by various issues. But, under these circumstances,
17 Your Honor, it is not a situation where exclusivity should be
18 lifted. Exclusivity should remain. The debtor should be
19 given the opportunity to, in fact, keep moving this ball down
20 the field, and get to the point where it can file a
21 confirmable consensual plan. Thank you.

22 MR. INSELBUCH: Good afternoon, Your Honor.

23 THE COURT: Good afternoon.

24 MR. INSELBUCH: Elihu Inselbuch for the Asbestos
25 Personal Injury Creditors -- or Claimants Committee. First,

1 let me correct the record about what has taken what amount of
2 time here. Because it's very easy to blame things on recusal
3 motions and whatever else. In fact, when Judge Rolin
4 replaced Judge Farnan, in the winter of 2001/2002, Judge
5 Rolin brought on both the USG and the Grace scorched --
6 scorched earth attempts to resolve their asbestos liabilities
7 for hearing. And he brought them onto the hearing, if I
8 remember correctly, in July of 2002. At that hearing, or in
9 a status conference around that hearing, I pointed out to the
10 Court that there was no Futures Representative appointed
11 either in USG or in Grace. And that estimation, in whatever
12 form it would take, of asbestos liabilities, couldn't go
13 forward in the absence of a Futures Representative. At the
14 same time, he asked me to present candidates for those roles
15 to the two debtors, which our Committee did. We presented
16 two candidates, both of whom had been approved by debtors in
17 other asbestos Chapter 11's. Dean Trafolette (phonetic) and
18 Eric Green. Dean Trafolette was then serving in the
19 Armstrong case, and Eric Green was then serving in the
20 Babcock and Wilcox case. And I might say, Eric Green had
21 been nominated for that role, in the Babcock and Wilcox case,
22 by counsel for the debtor in the Grace case or counsel in the
23 B&W case. We thought both of those gentlemen would be
24 eminently selectable and non-controversial. We said, didn't
25 matter to our committee which one worked in which case. It

1 was up to the debtors. USG immediately advised us that Dean
2 Trafolette would be acceptable. They moved his appointment
3 by the Court, the Court appointed him and, in fact, the
4 entire process involving USG's attempts to re-litigate all of
5 their asbestos liabilities has been going forward in front of
6 Judge Rolin. That did come to a halt in October of 2003,
7 just as it was on the threshold for notice to the various
8 people in interest. But much progress had been made on the
9 problem to that time. On the other hand, W.R. Grace told us
10 that -- first, they didn't come back to us. Then, finally,
11 when USG had selected Trafolette, they told us, for one
12 reason or another, without explaining why, that Eric Green
13 was unacceptable to them. We said, Well, fine. Give us
14 another candidate, and they didn't give us another candidate
15 for nearly a year. And that was, of course, heard before
16 Your Honor, with the suggestion that Judge Hamlin be the
17 futures representative, and that has, of course, been shot
18 down. But, the delay of the year from July of 2002 to
19 sometime in the fall of 2003 was not the fault of Judge
20 Rolin, was not the fault of -- certainly not of this Court,
21 and it was not the fault of the asbestos constituency. We
22 wanted to move the case forward. We litigated actively with
23 USG, and we have reached a point in that litigation where
24 that process is probably ready to go forward. This case is
25 not going forward, has not gone forward with respect to the

1 asbestos personal injury constituency. Bear in mind what
2 they're up to. What the debtor is up to here. Having filed
3 in Chapter 11, they want to say, We want to stop the world
4 here and re-litigate our asbestos personal injury
5 liabilities. That's what they want to do, and they want to
6 do that on a spectrum that will take us years to complete.
7 The same spectrum that USG presented in its papers, which
8 were -- which were ruled on and substantially narrowed by
9 Judge Rolin. The same spectrum that these same lawyers
10 presented in the Babcock and Wilcox case, but which the
11 District Judge finally became exasperated with, and when she
12 became exasperated with their process, she said that it
13 wasn't going to go forward on that basis, and the Bankruptcy
14 Court then said, Well, I'm going to lift exclusivity, and
15 let's see if somebody can do something here. And in Babcock,
16 that led to the filing of the consensual claim. Now, you
17 might ask me what good it would do to relieve exclusivity
18 here? What could be done? Well, in addition to matters
19 involving Judge Rolin's recusal, there have been, as I'm sure
20 everyone is aware, attempts beginning in the late spring of
21 2003 to enact asbestos legislation in the congress. The fact
22 of that process, whether it will ever succeed or fail, has in
23 many ways thwarted the ability to have discussions in these
24 cases. I'm told through the press that Senator Frist is
25 about to bring that matter to the floor, and I believe,

1 ironically, it's the same date, April 19th, that the Third
2 Circuit will hear the appeal from Judge Rolin's recusal
3 motion denial, and that should come to an end as well. The
4 issue is not whether or not the Asbestos Committee will agree
5 to give equity to the W.R. Grace stockholders. That's not
6 the issue. And the issue isn't whether or not we must go
7 forward, because no one has so ruled on the procedure that
8 the debtor has proposed here. There are many different ways
9 to deal with estimation of asbestos liabilities. They can be
10 done as part of a confirmation process. And what I suggest
11 the Court should permit us to do, is see whether we can take
12 the lead here, and whether we can negotiate with the
13 commercial creditors, and whether we can negotiate with the
14 property damage claimants. And if we, all of the debtors
15 constituencies, creditor constituencies, might be able to
16 find common ground, then it may be that we'll have to teach
17 the debtor what the common ground is in the courthouse. But
18 there is no reason in the world to just leave us standing in
19 the corner -- and there certainly is no dialogue going on
20 between our two constituencies -- leave us in the corner. We
21 are the principal reason for this Chapter 11, as the debtor
22 says. Our clients are sick and dying. They're not getting
23 paid. We're in the third year of this process. Let us try
24 and put a plan together, either with the other creditor
25 constituencies, or without them and present it and present to

1 the Court a methodology for going through the confirmation.
2 Thank you.

3 THE COURT: Anyone else want to be heard? Good
4 afternoon.

5 MR. KRUGER: Good afternoon. Lewis Kruger, Your
6 Honor, of Stroock Stroock & Lavan, counsel for the Unsecured
7 Creditors Committee or the Commercial Creditors, as they're
8 sometimes called in these cases. I've heard what Mr.
9 Inselbuch had to say, but the reality really is that until
10 there is some court directed disposition of the asbestos
11 claims, the chances for a consensual resolution appear to me
12 to be small. I see no reason to remove exclusivity from the
13 debtor. Mr. Inselbuch and we speak on some regular basis.
14 If there was indeed a deal to be done between us, we would
15 certainly be prepared to discuss that and go forward with it.
16 But the reality of it is that there -- we are as far apart,
17 perhaps, as we ever were. The reality is that Mr. Inselbuch
18 and the asbestos litigants would like to have an estimation
19 process that essentially removes the need to deal with all
20 the issues that have been raised either in the Grace case or
21 in the USG case, with respect to the specific individual
22 claims of individuals who claim asbestos disease of one kind
23 or another. And until those issues are addressed by a court,
24 I think the chances of a resolution are extremely small.
25 Other hand, Mr. Inselbuch has some proposal he wants to make

1 to the commercial creditors or to Grace, obviously we're all
2 here to receive it. Whether it's a proposal as to how to
3 treat the asbestos claims, or otherwise, he can certainly do
4 that. It doesn't require the removal of estimation of --
5 pardon me -- the removal of exclusivity from the debtor to
6 accomplish that purpose. So, on behalf of the Committee, we
7 would urge the Court to retain exclusivity with the debtor.

8 THE COURT: Good afternoon.

9 MR. BECKER: Good afternoon, Your Honor. Gary
10 Becker from Kramer Levin for the Equity Committee. Your
11 Honor, I believe that Ms. Baer has appropriately outlined the
12 steps that the debtor has taken to try to resolve this case,
13 and the roadblocks that have been run into, through no fault
14 of the debtor. I believe that Mr. Inselbuch's disposition on
15 the Futures Representative is a red herring. The debtor's
16 case management proposal, as I recall, dealt with current
17 claimants. Essentially getting a bar date, forcing people to
18 file proofs of claim, and then going through and weeding them
19 out by various mechanisms. I don't think that necessarily
20 implicates a Futures Representative. Ultimately, in a 524(g)
21 case, you will need a Futures Representative, but I don't
22 believe that the -- the delay in selecting a Futures
23 Representative has been harmful to this case, and eventually
24 you will need one, but I don't think that that delay can be
25 laid entirely at the debtor's doorstep, and it hasn't -- I

1 don't think it would have made a difference. Right now we
2 are waiting for Judge Rolin, or whoever the judge may be, to
3 assist us in dealing with asbestos personal injury claims.
4 And until we have a process where that can be done, the
5 debtor should maintain exclusivity.

6 THE COURT: Anyone else? Ms. Baer.

7 MS. BAER: Your Honor, I'd like to address first,
8 the last point that Mr. Inselbuch made, which sounds almost
9 identical to a point that Peter Lockwood made in September,
10 when we were last here on exclusivity. He argued that the
11 exclusivity should be lifted so that the asbestos PI people
12 can take a shot at meeting with the committees and trying to
13 put together a plan. And we argued then, and we argue again
14 now, nobody has ever said to the PI Committee don't make a
15 proposal, don't talk to us. In fact, quite the opposite.
16 We've tried to talk to them. We've given them numbers.
17 We've given them a framework. Their response was, absolutely
18 a non-starter, nothing to talk about. Your Honor, we don't
19 need to lift exclusivity to get them to talk. They can talk
20 to us at any time, they can talk to Mr. Kruger at any time.
21 The fact of the matter is they haven't talked to anybody.
22 They simply said, Nothing you've said is what we want, and
23 gone away. Your Honor, we very much here would like to put
24 together a plan. We have some issues that, frankly, may not
25 be able to be resolved by consensus. But there are lots of

1 things we can talk about. We'd welcome any proposal they
2 want to make, any suggestions they want to make in putting
3 together something that will work for this company. We
4 simply just have not gotten anything from them. And they do
5 not need -- exclusivity does not need to be lifted so that
6 they can start talking to people.

7 THE COURT: Well, look. Is the debtor at this
8 point -- early on in this case, Mr. Bernick (phonetical) used
9 to say that the debtor wasn't sure that it was going to seek
10 a 524(g) injunction. Is the debtor going to seek one?

11 MS. BAER: Your Honor, the proposal that we put
12 together called for a 524(g) injunction, and the Sealed Air
13 settlement, as presently structured, calls for a 524(g) plan.
14 However, given where we are with the asbestos personal injury
15 people, nobody knows for sure at the end of the day, whether
16 we will be able to confirm a plan under 524(g). It would
17 have to be, essentially, consensual, in all likelihood. So,
18 Your Honor, to this day I can't tell you that it will be a
19 524(g) plan.

20 THE COURT: Well, if it isn't going to, why don't
21 we have a plan on the table?

22 MS. BAER: Because, Your Honor --

23 THE COURT: Because, if it isn't, we're dealing
24 only with current claims. That's a cram down issue. Let's
25 get at it.

1 MS. BAER: Well, again, Your Honor, I think
2 everybody would acknowledge that a 524(g) plan may make --
3 may make sense here.

4 THE COURT: Then let's get a Futures Rep. I mean,
5 you can't have it both ways. We either need the pieces in
6 place to get a 524(g), or else we need a plan that doesn't
7 have one. Take your pick. Let's do it. It's been a long
8 time. And, frankly, I'm getting to the point where if I
9 don't lift exclusivity, I'm going to appoint a trustee, and
10 that will cause all sorts of problems, I know, for the
11 debtors lending perspective, if nothing else. But, this has
12 gone on too long, with too little progress. Now, last
13 September, I thought I provided some marching orders so that
14 people could start talking. I'm glad to hear that the debtor
15 has taken that to heart and attempted to try to get the
16 constituents together. But, I still don't see any progress
17 as a result of it, and that was six months ago.

18 MS. BAER: Well, Your Honor, you don't see progress
19 because you don't have a filed plan before you. That doesn't
20 mean progress hasn't been made. Filing the plan is somewhat
21 of a mechanical thing at the end of the day. It's all of the
22 meat that goes into it, and all of the negotiations that go
23 into it. We have done the number crunching. We have put
24 together proposals that we believe will fly. Again, we have
25 a lot of work to do to try to make that actually happen,

1 especially on a consensual basis.

2 THE COURT: But, look, if you're not going to seek
3 a 524(g) injunction, I agree, we need an asbestos bar date.
4 We set an asbestos bar date, and if you want to litigate the
5 two hundred thousand asbestos injury -- personal injury
6 claims independently because some of them have symptoms and
7 some don't, fine. Because if you're not seeking a 524(g)
8 injunction, it comes down to simply a claims allowance, a
9 voting, and possibly a cram down issue, and nothing more.
10 There is no reason for me to lift exclusivity if that's what
11 you want to do. But there's also no reason for the debtor to
12 be delaying any further. If you want the 524, then get the
13 constituent parts in place, meaning a Futures Rep, and I
14 expect a motion, one way or the other, telling me what you're
15 going to do set for the next omnibus hearing. I'm going to
16 continue the debtor's request, and I'll continue exclusivity
17 for one month to let the debtor decide whether it's seeking a
18 524(g) or not, and if so, to have a motion filed before the
19 next omnibus hearing to appoint a Futures Rep. Then I'll
20 deal with this exclusivity motion next month. In the
21 meantime, folks, talk to each other.

22 MS. BAER: I understand, Your Honor. We will do
23 so.

24 THE COURT: All right. Item 1 is continued, but
25 the debtors exclusive period is continued. I'm not sure when

1 it expires now, frankly.

2 MS. BAER: Your Honor, it would have expired, but
3 for the tolling that's --

4 THE COURT: Yes.

5 MS. BAER: -- permitted by the Delaware statute.

6 THE COURT: Fine. Okay. So, it's continued in
7 effect, pending the next hearing, and then I'll address it
8 further at the next hearing.

9 MS. BAER: Thank you, Your Honor.

10 THE COURT: All right. The debtor is to advise at
11 least, I guess, a week before the hearing, whether it is
12 going to seek a 524(g) injunction. I guess that's assuming
13 Sealed Air and Yessenia (phonetical) the settlements approve?

14 MS. BAER: Your Honor, that settlement can't be
15 approved because we don't have a judge right now to approve
16 it.

17 THE COURT: Well, I know. But I mean, I take it
18 that the 524(g) issue is contingent on getting that
19 settlement approved; or not?

20 MS. BAER: The way in which the settlement is
21 structured is it calls for a 524(g) trust unless Sealed Air
22 decides that they don't want a 524(g) trust. So, the
23 possibility would be out there for the debtor, and in fact,
24 it specifically would permit the debtor to file a non-524(g)
25 plan, but then there would be negotiations with Sealed Air

1 over whether they would go forward on their settlement.

2 THE COURT: All right. So that won't stop the
3 debtor from deciding whether or not to do a 524(g) or not,
4 then?

5 MS. BAER: No, Your Honor.

6 THE COURT: Okay. That's fine. Then a week before
7 the hearing, I either want a motion filed to appoint the
8 Futures Rep -- I realize it won't be heard at the next
9 omnibus, but I want it filed -- if the debtor is seeking a
10 524(g), and if the debtor isn't, then I want that statement
11 indicated in writing, and then we'll deal with time periods
12 within which the debtor is to file a plan at the next hearing
13 after that and possibly a bar date. If the bar date issue
14 has to go to the District Court, then I'll ask to have a
15 temporary District Court judge assigned. We're going to get
16 this case moving.

17 MS. BAER: Thank you, Your Honor.

18 THE COURT: Mr. Baena.

19 MR. BAENA: I don't want to get caught up in the
20 brinkmanship of some of the comments that were made, but I
21 want to make it very clear that we worked very hard on that
22 Sealed Air settlement. And that Sealed Air settlement could
23 evaporate if there isn't a 524(g) injunction. And that's
24 a -- more than a billion dollars that asbestos claimants, and
25 other claimants, I think, would expect to come into this

1 estate.

2 THE COURT: Okay.

3 MR. KRUGER: Your Honor, just to follow up on the
4 Sealed Air settlement. The Sealed Air settlement has not yet
5 been presented for approval to the Court, because there is
6 not a judge to approve it. But the Committee, my Committee,
7 if you will, has serious objections to various aspects of
8 that settlement. So, it's not quite as simple as being
9 presented here today. And the reality is that I still
10 believe that the debtor has done what it can to try to move
11 these cases forward. The reality is that absent court
12 decisions about the quality of the claims and voting, it's
13 hard to make a consensual plan in this case. And I also am
14 concerned that the issue with respect to a future claims
15 representative, that there seems to be a common belief that a
16 future claims representative serving in one case may serve in
17 all cases or other cases. It seems to me, as I've gotten
18 more and more, and the Committee has gotten more and more
19 involved in these cases, a future claims representative
20 serving in more than one committee -- or, pardon me, on more
21 than one debtor, may indeed have inseparable conflicts of
22 interest. Because instead of defending the estate for which
23 they are the futures claims representative, and being certain
24 that claims that are made apply only to that estate, what has
25 happened is, indeed, that people seem to believe that a claim

1 when made, applies against all debtors -- whether this
2 debtor, USG, Owens, whoever it may be -- equally. It seems
3 to me that that makes future claims representatives incapable
4 of serving more than one master.

5 THE COURT: Well --

6 MR. KRUGER: So, it may be an issue.

7 THE COURT: -- find one who's not appointed.

8 MR. KRUGER: It may be --

9 THE COURT: If you, you know, if you can find
10 somebody else who's willing to do this job, who is not
11 currently appointed in another case, that's fine. You know,
12 my view of the asbestos world is that all these cases ought
13 to be aggregated, all the insurance proceeds ought to be put
14 into one pot, all of the debtor's assets ought to be put in,
15 because all the claims are filed in every case. And there
16 ought to simply be one settlement everywhere to deal with
17 everybody, and then we'd get out of here. But I suppose
18 that's what legislation's for. So, meanwhile we'll keep --
19 we'll keep trudging down the path we're trudging. Okay.

20 MS. BAER: Your Honor, I believe that concludes the
21 agenda.

22 THE COURT: Any housekeeping matters? I have one.
23 The case management order -- it's come to light in another
24 case -- apparently is confusing people with respect to
25 adversaries, and whether or not it applies to motions in

1 adversaries. I don't think it's come up as confusing in this
2 case, yet. It obviously can apply to the initial, for
3 instance, a motion to dismiss -- to dismiss a responsive
4 pleading that is filed in lieu of an answer. And I don't
5 think it can apply to responses to cross-claims and
6 counterclaims, because those are all governed by national
7 rule. But, it seems to me it could apply to other things. I
8 guess the question is whether or not it's going to take too
9 long to get items, for example, discovery disputes, on the
10 calendar. I doubt that it is, because unless the adversary
11 itself is expedited for some reason, then I don't think it
12 should cause a problem. Why don't you take a look at the
13 case management order -- I'm asking all of the cases -- I
14 want to keep the case management orders consistent from case
15 to case, otherwise I'll go crazy. And, so, I have asked them
16 in Owens this morning, and I will be asking this afternoon,
17 to take a look at this issue, and see if there's a way that
18 perhaps it can be clarified that it does apply to certain
19 things in the adversaries, or else it simply doesn't. But,
20 before I enter a proposed order in any case, as I said, I
21 want to keep them all the same. My inclination is to think
22 that it could apply, except to the initial responses to the
23 initial pleadings in the case. It could apply, for example,
24 to motions for summary judgment, and partial summary
25 judgment, and whatever, because those are normally set on a

1 time frame anyway. It, for the most part, would give you
2 longer times to answer than the Delaware Local Rules, but it
3 would key it to getting things into the binder, so that I can
4 be ready for the hearings.

5 MS. BAER: Thank you --

6 THE COURT: So --

7 MS. BAER: -- Your Honor. We'll take a look at
8 that.

9 THE COURT: Okay. Any others? All right. Thank
10 you. We're adjourned.

11 MS. BAER: Thank you.

12 (Whereupon at 1:10 p.m. the hearing in this matter
13 was concluded for this date.)

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17
18 I, Elaine M. Ryan, approved transcriber for the
19 United States Courts, certify that the foregoing is a correct
20 transcript from the electronic sound recording of the
21 proceedings in the above-entitled matter.

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